

MR/P3188
5th July 2021

London Borough of Camden
Regeneration and Planning
5 Pancras Square
London
N1C 4AG

Dear Sir / Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) –
CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT**

36 EARLHAM STREET, LONDON WC2H 9LH

PLANNING PORTAL REF: PP-10006108

On behalf of the applicant, Shaftesbury Covent Garden Limited, we write in support of an application for a Certificate of Lawfulness of Proposed Use or Development in relation to the use of the ground floor and basement of 36 Earlham Street as pet shop with ancillary dog grooming facilities following the occupation of the unit by a new tenant.

The requisite application fee of £231.00 has been paid to the Council online via Planning Portal.

In accordance with Section 191 of the Town and Country Planning Act 1990, the applicant is able to seek a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) to confirm that the proposed use falls within the lawful use of the basement and ground floor of the premises (Class E).

It is important to distinguish between the determination of a CLOPUD and other planning-related applications. Unlike the latter, which may be open to subjective opinion, the determination of a CLOPUD application must be based upon factual evidence and relevant Planning Law.

Site Location

36 Earlham Street ('the Site') is located to the south side of Earlham Street. The property is a four storey (plus basement) 19th century building with an established retail use across the basement and ground floors. The property is Grade II listed alongside 36 and 40 Earlham Street (list entry 1342095) and is within the Seven Dials (Covent Garden) Conservation Area.

This CLOPUD application relates solely to the basement and ground floor of the property. At present the basement and ground floor are within Class E (Commercial, Business and Service) use. Both floors are accessed from ground floor level on Earlham Street and comprise 49.8 sqm GIA, respectively.

Architecture Planning Interiors

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Planning Background

The Site has been granted a number of planning permissions and listed building consents for additions and alterations to the shopfront, including internal alterations such as the formation of a door opening.

A detailed planning history is contained within Appendix 1 of this letter.

Evidence of Use

The basement and ground floor of the premises have been in a long-standing retail use that has become lawful over the passage of time. This use is confirmed, inter alia, by the planning permission from 2005 (reference 2005/4044/P) for "*alterations to shopfronts at 36 and 38 Earlham Street, including reinstatement of original doors and fanlights, with partial removal of blocked in entrances*".

Valuation office agency rates also confirm the use of the basement and ground floors of 36 Earlham Street as a "Shop and premises" dating back to 2010.

Following changes to the Use Classes Order on 1st September 2020, retail uses (formerly Class A1) are considered to now fall under Use Class E (Commercial, business and service), including retail, restaurant, office, financial/professional services, indoor sports, medical and nursery uses along with "any other services which it is appropriate to provide in a commercial, business or service locality". The basement and ground floors of the premises at 36 Earlham Street therefore have a lawful Class E use.

Proposed use

The applicant seeks a Certificate of Lawful Proposed Use or Development (CLOPUD) to confirm that the proposed use (with 'traditional' retail on the ground floor and an ancillary dog grooming service in the basement) falls within the established lawful use of the unit (Class E).

In support of the application, we enclose the following drawings:

- Ground Floor Plan
- Basement Floor Plan

The ground floor will consist of a 'traditional' retail use as a pet shop, selling various dog related accessories including collars, leads, harnesses, toys, and beds. The basement will be used for an ancillary dog grooming facility, including washing, blow-drying and hair cutting. There will be no form of medical or veterinary service provided.

The Use Classes Order (September 2020) states that Class E is inclusive of the:

- *Display or retail sale of goods, other than hot food* – Part E(a)
- *Other appropriate services in a commercial, business or service locality* – Part E(c)(iii)

It is considered therefore the proposed use of the ground and basement floors can both be considered to fall within Class E.

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The grooming service would have a maximum of 3 dogs every 2 hours, with slots at 10am, 12pm, 2:15pm and 4pm (an upper limit of 12 dogs over the course of the day). Retail goods would be visible through the shopfront window at ground floor level which would continue to encourage visits from members of the public. No clinical waste will be produced and no 'industrial procedures' are required.

The Council may consider the 'beauty treatment' offered in the basement to be similar to a tattoo parlour, nail bar, tanning studio, or similar use that would traditionally fall outside of the former retail (Class A1) use. The Council has recently granted a lawful development certificate for a tattoo parlour as Class E (reference 2020/4682/P) at 31 Chalk Farm Road, noting that "*Tattoo parlours would fall within Class E as it is an appropriate service to be found in a commercial, business of service locality*". It is considered this rationale would also apply to the proposed dog grooming use, which in any case remains ancillary to the primary retail use on the ground floor.

Conclusion

The basement and ground floor of 36 Earlham Street have been in historic retail (formerly Class A1) use. Following changes to the Use Class Order in September 2020, the unit now has a lawful Class E use.

The proposed introduction of a small dog grooming use in the basement is considered to remain within Class E, due to Part E(c)(iii) of the revised Use Class Order including "*Other appropriate services in a commercial, business or service locality*". This notwithstanding, the grooming use remains ancillary to the ground floor retail use.

It is therefore considered that the proposed uses across the basement and ground floor are lawful within Class E and therefore do not require planning permission and a Certificate of Lawfulness of Proposed Use or Development should be granted.

We trust that the information submitted is sufficient for the application to be registered and considered by the Council. Should it be necessary to provide any additional information in support of the application, please do not hesitate to contact the undersigned.

Yours faithfully

Mark Rattue

For and on behalf of
Rolfe Judd Planning Limited

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Appendix 1 – Relevant Planning History